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6 Attorneys for Plaintiff Karl T. Anderson,
Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION

In re Case No. 6:18-bk-16732-SY
WILLY CAIPO, Chapter 7
Debtor. Adv. No.

5 KARL T. ANDERSON, solely in his capacity
as the Chapter 7 trustee for the bankruptcy
estate of Willy Caipo,

Plaintiff,

Defendants.

Case No. 6:18-bk-16732-SY
Chapter 7
Adv. No.

COMPLAINT TO:

- (1) AVOID AND RECOVER INTENTIONAL FRAUDULENT TRANSFER;**
 - (2) AVOID AND RECOVER CONSTRUCTIVE FRAUDULENT TRANSFER;**
 - (3) DISALLOW CLAIMS;**
 - (4) DECLARATORY RELIEF; AND**
 - (5) UNJUST ENRICHMENT**

Status Conference

Date: To be set
Time: To be set
Place: Courtroom 302
3420 Twelfth Street
Riverside, CA 92501

Karl T. Anderson, the duly appointed, qualified and acting Chapter 7 trustee (“Trustee” or “Plaintiff”) for the bankruptcy estate (“Estate”) of Willy Caipo (“Debtor”), alleges as follows:

1 **I. STATEMENT OF JURISDICTION AND VENUE**

2 1. This adversary proceeding is filed pursuant to Federal Rule of Bankruptcy Procedure
3 7001(1) (a proceeding to recover money or property).

4 2. Plaintiff, as Trustee for the Debtor's Estate, has standing to bring this action under
5 11 U.S.C. §§ 323, 544, 548, and 550.

6 3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§
7 157 and 1334.

8 4. This adversary proceeding arises and is related to the Debtor's bankruptcy case,
9 which was commenced through the filing of a voluntary petition for relief under Chapter 7 of the
10 Bankruptcy Code by the Debtor on August 9, 2018 ("Petition Date") in the Central District of
11 California, Riverside Division.

12 5. Venue is proper in this District pursuant to 28 U.S.C. §1409, as this adversary
13 proceeding arises under Title 11 or arises under or relates to a case under Title 11 which is pending
14 in this District and does not involve a consumer debt less than \$19,250.00.

15 6. This action is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (H).

16 7. To the extent that the Plaintiff asserts claims under 11 U.S.C. §544, the Plaintiff is
17 informed and believes and based thereon alleges that there exists in this case one or more creditors
18 holding unsecured claims allowable under 11 U.S.C. §502 or are not allowable under 11 U.S.C.
19 §502(e), who can avoid the respective transfers as set forth hereinafter under California or other
20 applicable law.

21 **II. PARTIES**

22 8. Plaintiff is the duly appointed, qualified, and acting Chapter 7 trustee for Debtor's
23 Estate.

24 9. Plaintiff is informed and believes and thereon alleges that defendant Elsa Espejo-
25 Elias ("Elsa") is and was at all relevant times herein, an individual residing in the County of
26 Riverside, State of California. Plaintiff is informed and believes and thereon alleges that Elsa is the
27 Debtor's mother.

28 ///

10. Plaintiff is informed and believes and thereon alleges that defendant Liliana Raygada (“Liliana” and collectively with Elsa, the “Defendants”) is and was at all relevant times herein, an individual residing in the County of Riverside, State of California.

III. GENERAL ALLEGATIONS

11. On August 9, 2018, the Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code.

12. Karl T. Anderson is the duly appointed, qualified and acting Chapter 7 trustee in the Debtor's bankruptcy case.

13. The Trustee is informed and believes and thereon alleges that the Debtor owned the real property located at 2081 S. Bobolink Lane, Palm Springs, CA 92264 (“Property”) since at least 2009.

14. The Trustee is informed and believes and thereon alleges that pursuant to a Grant Deed recorded on July 28, 2015 in the San Bernardino County Recorder's Office as Document No. 2015-0333505 ("2015 Grant Deed"), the Debtor transferred his interest in the Property to the Defendants ("Transfer"). A true and correct copy of the 2015 Grant Deed is attached hereto as Exhibit "1." The Grant Deed states that no transfer tax was paid on the Transfer.

15. The Trustee is informed and believes and thereon alleges that pursuant to a Grant Deed recorded on February 2, 2016 in the Riverside County Recorder's Office as Document No. 2016-0044790 ("2016 Grant Deed"), Liliana transferred her interest in the Property to Elsa ("2016 Transfer"). A true and correct copy 2016 Grant Deed is attached hereto as Exhibit "2."

16. The Trustee is informed and believes and thereon alleges that at the time of the Transfer, the Debtor was unable to regularly pay his debts.

17. The Trustee is informed and believes and thereon alleges that after the Transfer, the Debtor remained liable on the mortgage against the Property until at least April 2017.

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1 **IV. FIRST CLAIM FOR RELIEF**

2 [Avoidance and Recovery of Intentional Fraudulent Transfer]

3 (11 U.S.C. §544, 548(a)(1)(A), 550, 551; California Civil Code § 3439 et. seq)

4 18. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 17 and
5 incorporates them in this Paragraph by reference.

6 19. Plaintiff is informed and believes and based thereon alleges that the Transfer was
7 made on or within four (4) years of the Petition Date, but in no event longer than seven (7) years
8 prior the Petition Date.

9 20. Plaintiff is informed and believes and based thereon alleges that the Transfer was
10 made either in anticipation of bankruptcy and/or to prevent the Debtor from paying his debts.

11 21. Plaintiff is informed and believes and based thereon alleges that the Transfer was
12 made for the purpose of preventing a prospective bankruptcy trustee and/or creditors of the Debtor
13 from obtaining the value of the Transfer.

14 22. Plaintiff is informed and believes and based thereon alleges that at the time of the
15 Transfer, the Debtor owed various debts to his creditors.

16 23. Plaintiff is informed and believes and based thereon alleges that the Transfer was
17 made with the actual intent to hinder, delay or defraud creditors, including Plaintiff.

18 24. The Trustee is informed and believes, and on that basis alleges, that the Transfer was
19 a fraudulent transfer avoidable under Bankruptcy Code Sections 544, 548 and California Civil Code
20 Sections 3439.04, 3439.07, 3439.09.

21 25. Plaintiff may recover, for the benefit of the Estate, the Transfer and the 2016
22 Transfer, or the value of the Transfer, from Defendants, as well the immediate and subsequent
23 transferees of the Transfer pursuant to 11 U.S.C. §§550, 551.

24 **V. SECOND CLAIM FOR RELIEF**

25 [Avoidance and Recovery of Constructive Fraudulent Transfer]

26 (11 U.S.C. §§544, 548(a)(1)(B), 550, 551 and California Civil Code § 3439 et. seq)

27 26. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 17 and
28 incorporates them in this Paragraph by reference.

27. Plaintiff is informed and believes and based thereon alleges that the Transfer was made on or within four (4) years of the Petition Date, but in no event longer than seven (7) years prior the Petition Date.

28. The Trustee is informed and believes that the Transfer from Debtor to Defendants was made: (i) for less than reasonably equivalent value to Debtor or any value, in exchange for said Transfer; (ii) while the Debtor was engaged or was about to be engaged in a business or a transaction for which the remaining assets were unreasonably small in relation to the business or the transaction; (iii) while Debtor intended to incur, or believed or reasonably should have believed he would incur, debts beyond her ability to pay them as they became due; and/or (iv) by the time that the Debtor was insolvent and/or was rendered insolvent by virtue of the Transfer.

29. The Trustee is informed and believes, and on that basis alleges, that the Transfer was a fraudulent transfer avoidable under Bankruptcy Code Sections 544, 548 and California Civil Code Sections 3439.05, 3439.07, 3439.09.

30. Plaintiff may recover, for the benefit of the Estate, the Transfer and the 2016 Transfer, or the value of the Transfer, from Defendants as the initial and subsequent transferee of the Transfer, or any additional subsequent transferee pursuant to 11 U.S.C. §§550, 551.

VI. THIRD CLAIM FOR RELIEF

[Disallowance of Claims]

(11 U.S.C. § 502(d))

31. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 30 and incorporates them in this Paragraph by reference.

32. Plaintiff is informed and believes and based thereon alleges that the Defendants received avoidable transfers and Defendants are each a party from which such transfers are recoverable pursuant to 11 U.S.C. §§550, 551.

33. Defendants have not paid the amount or turned over any such property for which Defendants are liable pursuant to the Bankruptcy Code.

34. Pursuant to 11 U.S.C. §502(d), to the extent either of the Defendants files a claim, such claim should be disallowed.

1 **VII. FOURTH CLAIM FOR RELIEF**

2 [Declaratory Relief]

3 35. Plaintiff hereby incorporates by reference paragraphs 1 through 30 and realleges
4 these paragraphs as though set forth in full.

5 36. Plaintiff and Elsa herein have a dispute in which a declaration of their respective
6 rights is necessary. Plaintiff is further informed and believes, and thereon alleges, that the said
7 disputes are actual and continuing, and concerns the continuing assertion by Elsa that she is the
8 owner of the Property, to the damage and prejudice of Plaintiff.

9 37. Plaintiff respectfully requests from this Court a declaration that the entirety of the
10 Property is property of the Estate pursuant to Section 541 of the Bankruptcy Code as the Transfer
11 can be avoided.

12 38. Plaintiff respectfully requests from this Court a declaration that Plaintiff, as Trustee
13 of the Debtor's Estate, is entitled to possession of the Property.

14 **VIII. FIFTH CLAIM FOR RELIEF**

15 [Unjust Enrichment]

16 (11 U.S.C. § 105)

17 39. Plaintiff hereby incorporates by reference paragraphs 1 through 30 and realleges
18 these paragraphs as though set forth in full.

19 40. The Defendants received a benefit through the Transfer and Defendants' retention of
20 the Transfer and/or the value of the Transfer results in unjust retention of said benefit at the Estate's
21 expense.

22 WHEREFORE, Plaintiff prays that judgment be entered as follows:

23 1. For avoidance of the Transfer and the 2016 Transfer under 11 U.S.C. §544, 548
24 and/or Cal. Civ. Code §§ 3439.04, 3439.05, 3439.07, 3439.09;

25 2. That Judgment be entered against the Defendants for the recovery of the Property or
26 the value of the Transfer;

27 3. That if Defendants fail or refuse to turn over the Property and/or the value of the
28 Transfer to Plaintiff, any claim of Defendants shall be disallowed;

4. Stating a declaration that Elsa has no right, title or interest in the Property, that the Property is property of the Estate and that the Trustee is entitled to possession of the Property;
5. For an award of attorney's fees along with costs of suit incurred herein;
6. For such other and further relief as the Court may deem just and proper under the circumstances of this case.

SHULMAN HODGES & BASTIAN LLP

DATED: November 7, 2018

By: /s/ Melissa Davis Lowe

Leonard M. Shulman
Melissa Davis Lowe
Attorneys for Plaintiff Karl T. Anderson, Chapter
7 Trustee

EXHIBIT 1

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name Elsa Espejo-Ellas
Liliana M Raygada
Street 2081 Bob O'link Lane
Address Palm Springs, CA 92264

City &
State
Zip

Title Order No. n/a

Escrow No. n/a

2015-0333505

07/28/2015 09:59 AM Fee: \$ 18.00

Page 1 of 2

Recorded in Official Records
County of Riverside
Peter Aldana
Assessor-County Clerk-Recorder



(18)

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Grant Deed

THE UNDERSIGNED GRANTOR (S) DECLARE (S)

APN: 681-192-023-2

DOCUMENTARY TRANSFER TAX IS \$ 0.00

unincorporated area City of Palm Springs

computed on full value of interest or property conveyed, or
 computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Willy M. Caipo, an unmarried man

hereby GRANT(S) to

Elsa Espejo-Ellas, a widow and Liliana M. Raygada, an unmarried woman as joint tenants

the following described real property in the

County of Riverside, state of California

See Exhibit "A" attached

Dated 7/27/2015

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Riverside

On July 27, 2015 before me,

G. Campa

(here insert name and title of the officer)

.notary public, personally appeared Willy M. Caipo

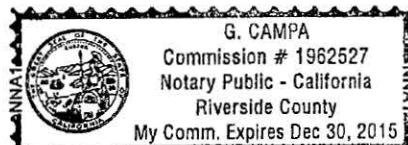
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the state of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature

(This area for official notarial seal)



MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE
Same as above

Name

Street Address

City, State & Zip

EXHIBIT 1

LEGAL DESCRIPTION

Real property in the City of Palm Springs, County of Riverside, State of California, described as follows:

LOT 111, PALM SPRINGS GOLF COURSE UNIT #3, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 37, PAGE 41 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 681-192-023-2



2014-9434236
11/13/2014 09:03A
2 of 2

EXHIBIT 2

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE
SHOWN BELOW, MAIL TAX STATEMENT TO:

Name Elsa Espejo-Elias
Street Address 2081 Bob O'link Lane
Palm Springs, CA 92264
City & State Zip

Title Order No. n/a Escrow No. n/a

2016-0044790

02/02/2016 02:30 PM Fee: \$ 15.00

Page 1 of 1

Recorded in Official Records
County of Riverside
Peter Aldana
Assessor-County Clerk-Recorder



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Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE (S)

APN: 681-192-023-2

DOCUMENTARY TRANSFER TAX IS \$ 0.00

unincorporated area City of Palm Springs

computed on full value of interest or property conveyed, or

computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Elsa Espejo-Elias, a widow and Lilianna M. Raygada, an unmarried woman, as joint tenants

hereby GRANT(S) to

Elsa Espejo-Elias, a widow

the following described real property in the

County of Riverside, state of California

LOT 111, PALM SPRINGS GOLF COURSE UNIT#3, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 37, PAGE 41 OF MAPS, IN THE OFFICE OF THE
COUNTY RECORDER OF SAID COUNTY.

Dated 12/14/2015

A notary public or other officer completing this certificate
verifies only the identity of the individual who signed the
document to which this certificate is attached, and not
the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF Riverside

On December 16, 2015 before me,

G. Campa

(here insert name and title of the officer)

,notary public, personally appeared Elsa Espejo-Elias,

Lilianna M. Raygada

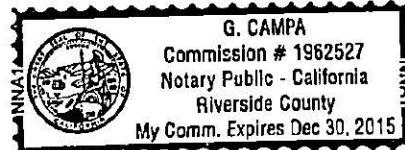
who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf
of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the state of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature

(This area for official notarial seal)



MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE
Same as above

Name

Street Address

City, State & Zip

EXHIBIT 2

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS KARL T. ANDERSON, solely in his capacity as the Chapter 7 trustee for the bankruptcy estate of Willy Caipo		DEFENDANTS ELSA ESPEJO-ELIAS, an individual, and LILIANA RAYGADA, an individual
ATTORNEYS (Firm Name, Address, and Telephone No.) <small>Leonard M. Shulman – Bar No. 126349 Melissa Davis Lowe – Bar No. 245521 SHULMAN HODGES & BASTIAN LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400</small>		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint to: 1) Avoid and Recover Intentional Fraudulent Transfer; 2) Avoid and Recover Constructive Fraudulent Transfer; 3) Disallow Claims; 4) Declaratory Relief and 5) Unjust Enrichment		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation <input type="checkbox"/> 65-Dischargeability - other
FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property		FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other
FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)		FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest
FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)		FRBP 7001(9) Declaratory Judgment <input checked="" type="checkbox"/> 91-Declaratory judgment
FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation		FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause
FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et.seq.</i> <input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law <input type="checkbox"/> Check if a jury trial is demanded in complaint		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23 Demand \$ _____
Other Relief Sought Disallowance of Claims, Unjust Enrichment		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR WILLY CAIPO	BANKRUPTCY CASE NO. 6:18-bk-16732-SY	
DISTRICT IN WHICH CASE IS PENDING CENTRAL DISTRICT	DIVISION OFFICE RIVERSIDE DIVISION	NAME OF JUDGE HONORABLE SCOTT H. YUN
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
<i>/s/ Melissa Davis Lowe</i>		
DATE November 7, 2018	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Melissa Davis Lowe	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form B1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.